

REMARKS

This Amendment is being filed in response to the Office Action mailed July 7, 2009, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the remarks to follow are respectfully requested.

Claims 1-29 are pending in this application, where claims 14-17, 26 and 28 had been previously withdrawn. Claims 1, 14 and 29 are independent.

Applicants thank the Examiner for acknowledging the claim for priority and receipt of certified copies of all the priority documents. Applicants further thank the Examiner for acknowledging receipt and consideration of the Information Disclosure Statement filed on January 18, 2007.

By means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice. Further, the specification has been amended for better conformance with the drawings, namely, to

include reference numeral 19 as shown in FIG 1.

By means of the present amendment, claims 1-29 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A', changing "characterized in that" to --wherein--, and deleting reference designations typically used in European practice that are known to not limit the scope of the claims. Such amendments to claims 1-29 were not made in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, claims 1-13, 18-25, 27 and 29 are rejected under 35 U.S.C. §102(b) over U.S. Patent Application Publication No. 2004/0047269 (Ikenaka). Applicants respectfully traverse and submit that claims 1-13, 18-25, 27 and 29, as amended, are patentable over Ikenaka for at least the following reasons.

Ikenaka is directed to an optical pickup apparatus and a diffractive optical element for providing  $m$ ,  $n$ , and  $k$  order diffracted-light rays of three different wavelengths. Paragraphs [0483] to [0493] and [0496] to [0501] recite various values for  $m$ ,

n, and k. None of these values are negative.

It is respectfully submitted that Ikenaka does not disclose or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 29 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein at least one of the selected diffraction orders  $m_1$ ,  $m_2$ ,  $m_3$ , is negative.

At least one of the selected diffraction orders  $m_1$ ,  $m_2$ ,  $m_3$ , being negative is nowhere disclosed or suggested in Ikenaka.

Accordingly, it is respectfully submitted that independent claims 1 and 29 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-13, 18-20, 22-25 and 27 should also be allowed at least based on their dependence from independent claims 1 and 21.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position,

should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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